

REMARKS:

The Office Action dated December 26, 2002 has been carefully considered. That Office Action presents two issues which are:

1. Which claims read on the elected specie?
2. Whether Tiefenbrun Patent No. 5,425,757 anticipates such claims as are properly examinable in this application.

Before turning to the question of which claims in this application read on the elected specie of Figure 3, we believe it will be helpful to first discuss the prior art rejection based on Tiefenbrun and the amendments made to the claims. As disclosed at page 13, line 16 through page 15, line 2 of the present application, the elected specie of Figure 3 comprises a plug member 120 and an elongate shaft 110 which have lumen 136 which extends from the proximal end of the elongate shaft to the distal end of the plug. The purpose of this lumen is to provide a "bleedback" position locator such that blood flow out of the proximal end of the elongate shaft will indicate that the distal end of the plug is in communication with the blood flow in a blood vessel. This is, of course, for the purpose of properly positioning the plug, so that it will seal a puncture in the wall of a blood vessel.

All of the independent claims now pending in this application, i.e., claims 39, 60 and 80 have been amended to recite the presence of this lumen extending from the distal end of the plug to the proximal end of the elongate shaft. Accordingly, it is believed that, as amended, claims

39, 40, 44-47, 52-55, 60-68, 80 and newly added claim 82 read upon the elected specie of Figure

3. The remaining claims have been cancelled without prejudice.

It is respectfully submitted that the claims, as amended, are plainly patentably distinct from Tiefenbrun. While Tiefenbrun does disclose a channel 36, which could also be characterized as a lumen, in his blood closure device 30, that channel is sealed by cap element 40 with membrane 50 such that it will not allow blood to flow out of closure device 30, but may be pierced with the needle of a syringe for the purpose of delivering medication. Thus, the closure device is not capable of performing the function of the device of the present application. Furthermore, the insertion tool 22 of Tiefenbrun has no lumen, unlike the elongate shaft of the present invention. Thus, the structure of Tiefenbrun is fundamentally different from that recited in the claims now pending in this application. The channel 36 of Tiefenbrun is not intended for the purpose of properly locating the closure device and does not extend through the insertion tool 22.

In summary, it is respectfully submitted that the claims now pending in this application are patentably distinct from the Tiefenbrun reference and all read on the specie of Figure 3. With regard to the latter, it is recognized that, with the amendments to the independent claims, the question of whether certain claims read on the elected specie of Figure 3 requires a fresh analysis, but that it is plain that all of the pending claims do read on Figure 3.

Furthermore, in response to the observations made by the Examiner in the first paragraph on page 3 of the Office Action:

1. The releasable feature recited in claim 45 is one of two alternatives which are disclosed at page 10, line 15-21 as being generally applicable to the embodiments disclosed in the application. Thus, claim 45 adds a feature to the structure recited in claim 39, but does not create a new specie.
2. With regard to claim 60, it is noted that this claim is directed to a plug member substantially permanently attached to the distal end of the elongate shaft, i.e., to the other alternate embodiment disclosed at page 10. Thus, claim 39 is generic to claims 45 and 60. This means that claims 45 and 60 are entitled to examination in the present application.
3. With regard to claim 56, which recites that the plug is formed from a bioabsorbable material, this feature is applicable to all of the species disclosed in the present application and does not constitute a different specie. Furthermore, it is not a function of the drawings to indicate what type of material the plug member is fabricated from. This is the function of the specification. Thus, it would not be proper to require support in Figure 3 for a recitation of bioabsorbable material.
4. With regard to claim 80, once again, a releasable plug connected to the elongated shaft by a connector is simply a narrowing of claim 45 which, in turn, is a narrowing of claim 39

such that claim 39 is generic to claim 80. On this basis, it is believed that claim 80 is entitled to examination in the present application.

5. Claim 82 is a substantial counterpart of claim 80, but recites that the plug and elongated shaft are substantially permanently attached to each other.

The amendments made herein and the cancellation of claims made herein are believed to create a claim set in which all of the claims read on Figure 3 of this application and are patentably distinct from Tiefenbrun. Thus, it is believed that all of the claims now pending in this application are allowable. A favorable action is respectfully solicited.

Respectfully submitted,

ORRICK, HERRINGTON & SUTCLIFFE LLP

Dated: May 20, 2003

By 
James W. Geriak, Reg No. 20,233

4 Park Plaza, Suite 1600
Irvine, CA 92614
949/567-6700 X 7740 Telephone
949/567-6710 Facsimile